

**Annual Report to the
Environmental Review Commission
North Carolina General Assembly**

**The Status of Leaking Petroleum Underground Storage
Tanks, the State Cleanup Funds, and the
Groundwater Protection Loan Fund
For Fiscal Year 2011 (July 1, 2010 to June 30, 2011)**

September 1, 2011



**NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES**

N.C. Division of Waste Management
Underground Storage Tank Section

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and
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Executive Summary

North Carolina's underground storage tank program is administered by the N.C. Division of Waste Management's Underground Storage Tank (UST) Section in DENR. The section enforces UST regulations and manages funds used to perform cleanups of petroleum UST discharges or releases (UST incidents). The program was initiated in 1988 in response to growing reports of USTs leaking petroleum into soil and groundwater supplies. Funding for the program is provided by the Commercial and Noncommercial Cleanup Funds, the federal LUST prevention grant, and the federal LUST cleanup grant. Until 1998, some funding was provided by the Groundwater Protection Loan Fund.

The Commercial and Noncommercial Cleanup Funds can also be used to provide a safe alternative to a drinking water well that has been contaminated by petroleum from a UST. In FY 2011, the UST program provided alternative water supplies to replace 126 contaminated water supply wells (some private wells and others serving public water systems).

FY 2011 Commercial Fund Activity (July 1, 2010 through June 30, 2011)

Commercial Fund Assets on July 1, 2011	\$ 63,445,967
Commercial Fund Revenues	\$ 26,951,504
Commercial Fund Expenditures	\$ 35,556,897
Commercial Fund Obligations (projected)	\$ 43,926,271
Estimated Commercial Fund Balance	\$ 10,914,303
Petroleum UST Incidents – Reported	303
Petroleum UST Incidents - Closed Out	504

FY 2011 Noncommercial Fund Activity (July 1, 2010 through June 30, 2011)

Noncommercial Fund Assets on July 1, 2011	\$ 3,233,230
Noncommercial Fund Revenues*	\$ 6,388,636
Noncommercial Fund Expenditures	\$ 7,441,178
Noncommercial Obligations (projected)	\$ 3,163,402
Estimated Noncommercial Fund Balance	(\$ 982,714)
Petroleum UST Incidents – Reported	428
Petroleum UST Incidents - Closed Out	391

*Includes transfers of \$4,283,393 to non-commercial trust fund per G.S. 119-18(b) from DOT

Summary of key statistics for the entire history of the UST program (July 1, 1988 to June 30, 2011)

Commercial Fund Revenues	\$ 593,155,437
Commercial Fund Expenditures	\$ 538,284,525
Noncommercial Fund Revenues	\$ 134,386,368
Noncommercial Fund Expenditures	\$ 134,015,377
Petroleum UST Incidents – Reported	26,204
Petroleum UST Incidents - Closed Out	17,746

In FY 2011, the UST cleanup funds continued to manage costs in accordance with the requirements of Session Law 2004-124 which directed the department to give priority to cleanup of releases that pose the greatest risks to human health and the environment and to emergency situations. The session law also directed the department to order non-emergency work only if the costs could be reimbursed by the appropriate cleanup fund within 90 days of claim approval. To meet these legislative requirements, the department uses a Risk, Rank and Abatement (RRA) scoring system that quantifies the relative risks of all releases, allowing the department to direct work at the highest risk incidents and reimburse the costs of that work within 90 days. Every week the department reviews balances, encumbrances and expenditures of both the Commercial and Noncommercial Funds, and periodically adjusts the RRA score threshold in order to direct as much cleanup work as resources will allow. By the end of FY 2011, the program was able to direct cleanup activities at all high risk commercial UST releases and at many intermediate risk releases. However, at that same time, the program could direct cleanup activities at only about four percent of all high risk noncommercial releases.

For the 12-month period from July 1, 2010 through June 30, 2011, as in the previous five fiscal years, the Commercial Fund balance exceeded obligations. Since FY 2008, fund obligations include un-reimbursed costs associated with work being undertaken by UST owners in advance of being ordered by the department to perform that work.¹ As a result, the fund balance for FY 2011 is considerably less than in fiscal years prior to FY 2008. However, this reporting change more accurately depicts the true fund balance. The Noncommercial Fund shows a negative balance because claims exceeded revenue. Noncommercial Fund obligations also include un-reimbursed costs of non-directed work. Based on the eligibility application and claim request activity in FY 2011, claim reimbursements are expected to continue to deplete revenues in both the Commercial and Noncommercial Funds.

Based on FY 2011, the following recommendations are to be considered:

- Transition from (and ultimately terminate) the Commercial Cleanup Fund. In place of a state-subsidized fund, owners and operators of regulated, commercial USTs should use other financial responsibility mechanisms, such as private insurance, bonding, letters of credit, self-insurance, and others.
- Prevent releases by maintaining a compliance inspection frequency of three years for USTs in North Carolina.
- Prevent releases by continuing to provide release prevention and detection training to UST owners and operators.
- Continue to find and implement better and more cost-effective methods for assessing and cleaning up petroleum releases.

- Continue to encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents.

¹ S.L. 2004-124 prevents DENR from ordering cleanup work unless the appropriate UST Cleanup Fund can reimburse approved costs of the work within 90 days. The law allows UST owners to proceed with cleanup work without being directed by DENR; however, these “undirected” activities often happen in connection with real estate transactions. UST owners moving forward without an order from DENR cannot be reimbursed until the Department has reimbursed the costs of all work actually ordered by the department.

North Carolina’s Regulated and Unregulated USTs

The North Carolina underground storage tank (UST) program deals with both regulated and unregulated USTs.

Regulated petroleum UST facilities are typically gasoline stations or government-owned fueling facilities. Regulated USTs, including those that are temporarily not in use, are required to be registered with the UST program, must remain in compliance with all aspects of leak prevention (such as leak detection, spill and overfill prevention and corrosion protection), and receive inspections to ensure their compliance. In addition, owners of regulated petroleum UST facilities, with the exception of federally-owned UST facilities, pay annual operating fees and can apply to the Commercial Cleanup Fund for reimbursement of the costs of assessing and cleaning up contamination. Regulated petroleum UST facilities must have valid operating permits issued by DENR to receive deliveries of fuel, and their operators must be trained.

Unregulated USTs include small tanks used to store home heating oil for individual homes and larger tanks used to store heating oil for schools, hospitals, multi-family residences, manufacturing facilities and government facilities. The smaller home heating oil USTs (which typically have a capacity of about 550 gallons) are not registered or inspected and are not required to have leak detection, corrosion protection, spill/overfill prevention or operating permits. A heating oil UST that stores fuel for consumptive use on the premises, and is larger than 1,100 gallons in capacity, must be registered and have a valid operating permit to receive deliveries of fuel. Owners of these larger petroleum commercial USTs pay annual operating fees and can apply to the Commercial Cleanup Fund for reimbursement of the costs of assessing and cleaning up contamination.

	Number of USTs	Number of Facilities
Privately-Owned	25,771	7,829
Federally-Owned	129	34
State-Owned	341	201
Municipality/County-Owned	675	323
Totals	26,916	8,387

In North Carolina, about 62 percent of the regulated USTs are owned by about 15 percent of the total number of owners. Generally, these are companies that own multiple facilities, and government entities. About 38 percent of USTs are owned by people having only one UST facility.

	# of Owners	# of USTs	# of Facilities
Owners of One Facility	3,417	10,111	3,417
Owners of Two Facilities	243	1,439	486
Owners of Three Facilities	73	706	219
Owners of Four Facilities	64	825	256
Owners of Five or More Facilities	206	13,835	4,009
Totals	4,003	26,916	8,387

Approximately one out of every four USTs in North Carolina is more than 29 years old. Only about 6 percent of the USTs are double-walled. This percentage is rising because on November 1, 2007, North Carolina's secondary containment rules went into effect. These rules require all UST systems (tanks, lines, and dispensers) installed or replaced after that date to be secondarily contained; that is, to have double-walled construction with leak detection monitoring devices in the spaces between the inner and outer walls.

	Active	Temporarily Closed	Total
Installed in or before 1973	2,366	917	3,283
Installed in 1974 to 1980	2,469	366	2,835
Installed in 1981 to 1990	9,418	628	10,046
Installed in 1991 to 2000	7,423	249	7,672
Installed in 2001 to 6/30/2011	3,044	36	3,080
Totals	24,720	2,196	26,916

Over the last nine years, the number of installations of new UST systems has been decreasing, while the number of permanent closures has been relatively constant (except for the last two-year period). The number of permanent closures in any year has always exceeded the number of new installations.

Year	# of New Installations	# of Permanent Closures
2000	545	1037
2001	511	733
2002	449	810
2003	297	709
2004	328	690
2005	335	768
2006	395	850
2007	299	570
2008	257	660
2009	215	625
2010	169	448
2011	177	330

Commercial USTs also include unregulated large heating oil USTs, which are greater than 1,100 gallons in capacity and store oil for consumptive use on the premises. These USTs are typically owned by hospitals, industries, schools, and government agencies. These USTs must have valid operating permits in order to receive deliveries of fuel.

	Number of USTs	Number of Facilities
Privately-Owned	710	519
Federally-Owned	27	45
State-Owned	109	72
Municipality/County-Owned	1,306	982
Totals	2,152	1,618

In 1988, there were approximately 58,000 commercial tanks in North Carolina whose owners were required to pay annual operating fees (billable tanks). Each year since 1988, the number of billable tanks has almost always decreased. Currently, North Carolina has about 26,916 active regulated USTs at 8,387 facilities. Inspection data show that 66 percent of tank owners and operators comply with UST regulations. These regulations cover proper operation and maintenance of UST systems and emphasize leak detection.

To help the state meet the requirements of the federal Energy Policy Act of 2005, the N.C. General Assembly (under Session Law 2008-107) authorized DENR to annually use \$791,614 in additional funds from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to establish and support 11 positions within the UST program, including one environmental program supervisor, nine environmental specialists, and one environmental engineer. The additional funds are made available from part of the increase in annual operating fees. Adding these positions to the UST program has enabled DENR to increase compliance inspection frequency and conduct UST operator training, as required by the federal Energy Policy Act. The department believes that expanded inspection and training activities will help prevent releases of petroleum from USTs into the environment. Session Law 2010-154 authorized DENR to develop and implement a training program for primary operators and emergency response operators of UST systems. The training program provides instruction on proper operation and maintenance of UST systems, including all associated state and federal regulatory requirements. At the close of FY 2011, 1,913 of 8,387 facilities had completed training.

Petroleum UST Incidents – Regulated and Unregulated USTs

Discharges or releases from petroleum USTs, called incidents or releases, are reported to DENR regional offices where they are added to an incident management database. Table 6 lists, for each region and for the entire state, the number of incidents reported, the number of incidents closed out, and the number of UST systems properly closed without leaks or releases (called “clean closures”). These numbers are listed for FY 2011 and for the entire history of the UST program.

Releases closed in any year are not necessarily the ones reported in that year – many releases take years to cleanup and close. Note that in FY 2011, the program closed more releases than were reported, a trend that decreases the backlog of open releases. There are probably various reasons for this, including a slowing of the economy which slows property transfers and construction (when many new releases are discovered), and an increase in the number of incidents now being directed by the UST program due to availability of resources in the Commercial Cleanup Funds.

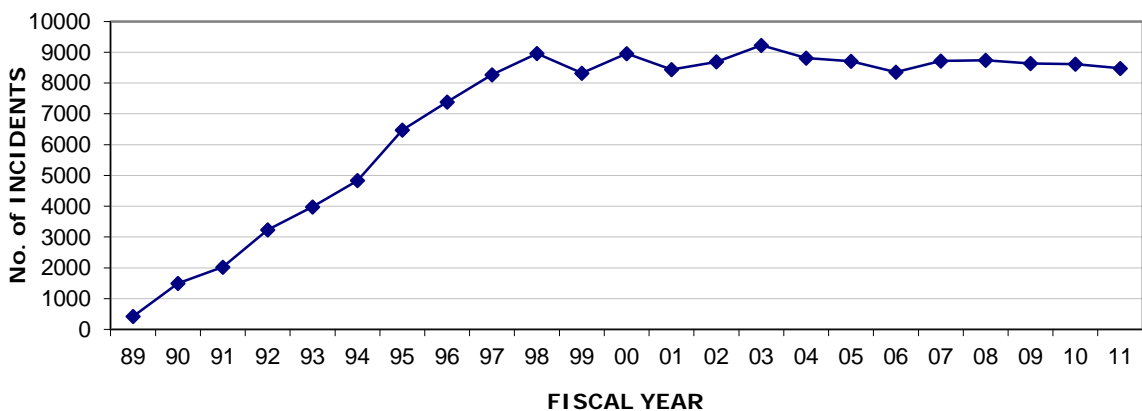
Region	7/1/10 – 6/30/11			7/1/88 – 6/30/11		
	Reported	Closed	Clean Closures	Reported	Closed	Clean Closures
Asheville	100	88	9	2,744	1,777	882
Fayetteville	29	58	26	1,182	1,072	1481
Mooresville	121	165	18	5,111	3,799	1298
Raleigh	160	184	10	5,305	3,534	693
Washington	115	136	1	3,390	2,232	114
Wilmington	53	58	3	2,041	1,282	472
Winston-Salem	153	206	15	5,731	4,035	2,015
State Totals	731	895	82	25,504	17,731	6,955

Incidents affecting groundwater that have been closed:	6,075
Incidents closed since risk-based corrective action began on 1/2/98:	13,434
Remaining open incidents:	7,773
Open commercial incidents:	6,257
Open noncommercial incidents:	1,516

At present, there are approximately 6,257 commercial incidents, in all risk categories, that have yet to be closed out. Although responsible parties continue to have a statutory duty to clean up petroleum releases, Session Law 2004-124 limits the amount of cleanup work that DENR can direct at any one time to the amount that can be paid for by the resources available in the funds. This approach has eliminated the negative balance of the Commercial Fund, has reduced the negative balance of the Noncommercial Fund, but has resulted in a backlog of releases waiting to be cleaned up. It is also important to note that additional releases are added to the inventory of existing petroleum releases every year. While the UST program works to clean up and close existing releases, new (or newly discovered) releases are also being reported. There was a modest decrease in the number of releases reported this year - 731 in FY 2011 compared to 793 in FY 2010.

Beginning January 2, 1998, DENR implemented risk-based corrective action rules for petroleum UST incidents. Under these rules, each incident is classified as “high,” “intermediate,” or “low” risk based on its potential threat to human health and the environment. The rules allow intermediate and low risk incidents to be cleaned up to less stringent standards than high risk incidents, since lower risk incidents, by definition, present much less chance of contaminating water supplies. (Since risk classifications depend on conditions that exist at a point in time, changing conditions can lead to reclassifications to higher or lower risk levels.) Of the total number of UST incidents closed since 1988, approximately 50 percent were closed following implementation of risk-based corrective action. As indicated in Figure 1, the number of open incidents increased from 1988 through FY 1998, remained fairly constant from FY 1998 until FY 2003, and has slightly declined from FY 2003 until the present.

Figure 1 - Open UST Incidents



Funding for the Underground Storage Tank Cleanup Program

The funds to administer all aspects of the UST program (about \$8.4 million per year) are provided as follows: (1) about 74 percent by legislative allowances to use specific amounts from the receipts in the Commercial and Noncommercial Cleanup Funds and (2) about 26 percent by a federal LUST prevention grant and a federal LUST cleanup grant, both provided by the US Environmental Protection Agency. Of the 101.25 full time equivalent (FTE) positions assigned to the UST program, 74.3 positions are supported by receipts and 26.95 by federal grants. In addition, the cleanup funds and federal grant monies pay for two regional administrative positions that support the program.

During a 2007 departmental reorganization, DENR assigned to the UST program the responsibility to ensure proper cleanups of petroleum releases from sources other than USTs such as above ground storage tanks, and provided some appropriated monies that support 4.55 FTE positions to oversee these cleanup activities.

Commercial and Noncommercial Leaking UST Cleanup Funds

The Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 (GS 143-215.94A et. seq) established two separate funds: the Commercial Cleanup Fund and the Noncommercial Cleanup Fund. Both may be used to reimburse eligible UST owners, operators, and landowners for the reasonable and necessary costs of environmental cleanup and third-party liability claims. Additionally, both funds enable DENR staff to:

- record and track UST release incidents;
- register and permit regulated USTs, manage tracking databases, and collect annual UST operating fees;
- identify parties responsible for releases;
- provide technical assistance and training to tank owners and operators;
- inspect UST systems to ensure compliance with leak detection and release prevention rules;
- monitor assessments and cleanups of releases;
- review site assessments and corrective action plans;
- evaluate innovative assessment and cleanup technologies;
- review, audit, and pay reimbursement claims;
- establish and manage contracts for cleanups by state-contracted environmental service providers;
- inspect and monitor land applications of contaminated soil; and
- locate, evaluate, and remove abandoned petroleum USTs that pose emergency situations.

DENR has the authority to contract for the cleanup of petroleum UST incidents if the owner or operator cannot be identified or located, if the owner or operator is financially unable to perform cleanup, or if the owner or operator refuses to perform the required cleanup. In the latter case, DENR is required by general statute to seek to recover costs incurred during assessment and cleanup activities.

Commercial Fund Receipts and Disbursements

Revenue into the Commercial Cleanup Fund

The sources of funding for the Commercial Fund include:

- one-half of approximately 30 percent of the motor fuel and kerosene inspection tax of 1/4 of one cent per gallon (See Note 1 below);
- 19/32 of the excise tax of 1/2 cent per gallon on motor fuel and kerosene;
- annual UST operating fees (See Note 2 below);
- costs recovered from UST owners and operators for work performed by state contractors;
- loan collection and interest for the Groundwater Protection Loan Fund; and
- interest earned on the account.

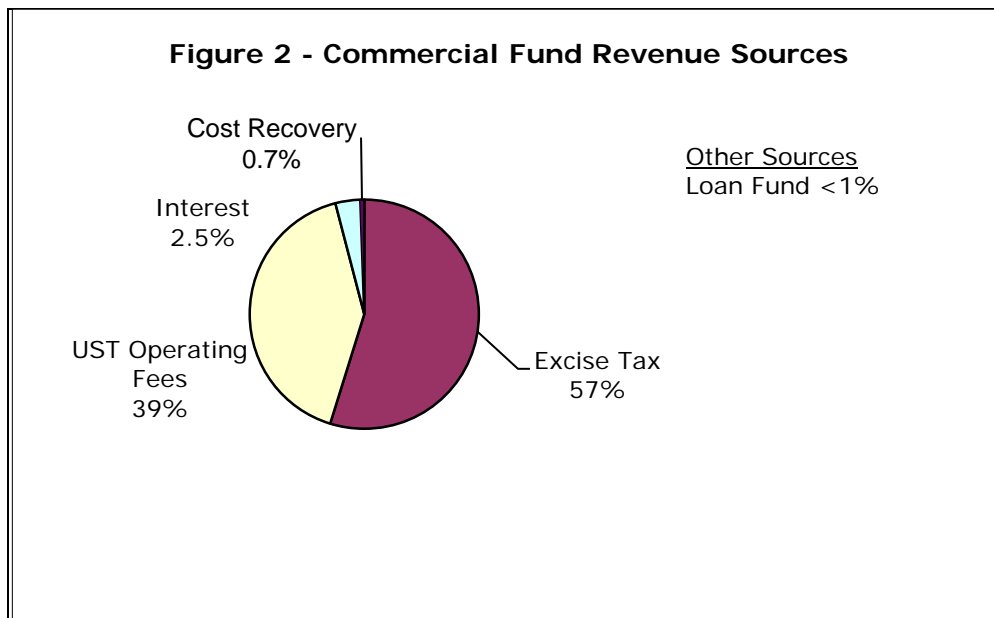
Note 1: After using a portion (about 70 percent) of the revenue to enable the departments of Revenue and Agriculture and Consumer Services to collect the inspection tax, one-half of the remaining revenue goes into the Commercial Cleanup Fund and one-half goes into the Noncommercial Cleanup Fund. However, if the balance of the Noncommercial Cleanup Fund is below \$5 million, all of the remaining revenue goes into the Noncommercial Fund. Since the balance of the Noncommercial

Fund has been below \$5 million during this fiscal year, all of the remaining revenue has gone into the Noncommercial Fund.

Note 2: Owners and operators of commercial petroleum USTs are required to pay annual operating fees into the Commercial Fund in order to be eligible for reimbursement from the Commercial Fund. Annual operating fees were first set at \$30 for tanks with capacities equal to or less than 3,500 gallons (small tanks) and \$60 for tanks with capacities in excess of 3,500 gallons (large tanks). Annual operating fees increased almost annually from 1989, reaching \$150 for small tanks and \$225 for large tanks by 1993. On January 1, 1997, fees increased to \$200 for small tanks and \$300 for large tanks. On January 1, 2009 annual operating fees were increased to \$420 per tank, regardless of capacity, per Session Law 2008-195.

Revenues received for the Commercial Fund for the 12-month period from July 1, 2010 to June 30, 2011 were approximately \$26.95 million (Table 7). The relative contributions to the Commercial Fund from each of the funding sources are illustrated in Figure 2.

Table 7 - Commercial Fund Revenues	
7/1/10 - 6/30/11	
Motor Fuel & Kerosene Inspection Tax	\$ 0
Motor Fuel & Gasoline Excise Tax	\$ 15,423,613
Operating Fees	\$ 10,680,351
State Lead Cost Recovery	\$ 186,222
Interest	\$ 661,318
Loan Fund Collection and Interest	\$ 0
Transfer from Bernard Allen Fund	\$ 0
Total Commercial Revenues	\$ 26,951,504
Transfer to Noncommercial Fund	\$ 0
Transfer to Department of Agriculture	\$ (90,000)
Transfer to Federal LUST Program (cost recovery)	\$ 0
Net Commercial Revenues	\$ 26,861,504



Disbursements from the Commercial Cleanup Fund

Eligible UST owners and operators, and landowners, may request reimbursements of reasonable and necessary costs incurred for environmental assessment and cleanup activities, and for third-party claims of costs resulting from bodily injury and property damage. In general, the Commercial Cleanup Fund will reimburse eligible costs up to \$1 million per occurrence for claimed amounts in excess of \$20,000, \$50,000 or \$75,000 (deductible amounts), which depend on statutory factors. Eligible costs in excess of \$1 million are reimbursed at 80 percent, up to a maximum of \$1.5 million. In some cases, variations of the standard deductibles occur because of compliance-related issues or multiple releases on one property.

Table 8 lists the receipts, disbursements and administrative expenses by fiscal year for the Commercial Cleanup Fund for the period July 1, 1988 to June 30, 2011.

Table 8
Receipts, Disbursements and Program Expenses for the Commercial Fund

Fiscal Year	Receipts	Disbursements ¹	Legislatively Allowed Program Expenses
FY 1989	\$ 2,337,685	\$ 14,768	
FY 1990	5,773,632	79,080	\$ 201,255
FY 1991	7,330,573	1,616,760	547,595
FY 1992	13,484,008	4,409,229	517,221
FY 1993	18,032,784	9,651,948	601,687
FY 1994	24,438,966	22,904,802	694,424
FY 1995	56,037,135 ²	37,405,510	666,270
FY 1996	28,178,768	44,060,639	2,322,632
FY 1997	28,564,034	44,163,273	2,623,339
FY 1998	27,291,220	30,267,392	2,530,036
FY 1999	26,783,344	16,104,152	2,567,668
FY 2000	27,178,623	22,820,069 ³	2,579,540
FY 2001	27,240,303	24,566,132 ⁴	2,730,236
FY 2002	27,124,210	36,872,426	2,397,264
FY 2003	27,055,759	26,498,565	2,221,851
FY 2004	26,934,685	23,514,179 ⁵	2,527,451
FY 2005	50,255,908 ⁷	46,966,083 ⁶	2,654,447
FY 2006	28,143,119	15,474,991 ⁸	2,636,228
FY 2007	27,564,837	7,372,403 ⁹	2,725,418
FY 2008	27,458,790	11,511,344 ¹⁰	2,859,460
FY 2009	31,026,131	15,007,590 ¹¹	3,380,143
FY 2010	27,969,400	17,760,225 ¹²	3,703,143
FY 2011	26,951,504	31,697,736 ¹³	3,859,161
TOTAL	\$593,155,428	\$490,739,296	\$ 47,457,143

1. Does not include program expenses.
2. Commercial receipts for FY 1995 included \$31,288,889 that was transferred from the Groundwater Protection Loan Fund.
3. Adjustment due to a transfer from the Commercial Fund to the Federal Trust Fund of \$288,117 as a clean-up expenditure rather than as a program expense.
4. \$33,866 transferred to Federal Trust Fund as a clean-up expenditure.
5. Includes transfer of \$2,036,932 from Commercial to Noncommercial Trust Funds per GS 119.18(b); transfer of \$90,000 to Department of Agriculture and Consumer Services; and transfer of \$452,722 to Federal Trust Fund as a clean-up expenditure.
6. Includes transfer of \$43,150,730 from Commercial to Noncommercial Trust Fund per GS 119.18(b). Transfer from Department of Agriculture and Consumer Services of \$38,702 to Federal Trust Fund.
7. Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19 million to the Trust Fund.
8. Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to Department of Agriculture and Consumer Services, and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.
9. Includes transfer to Noncommercial Fund of \$598,935 and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000) and Federal LUST Grant (\$108,904).
10. Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000), and Federal LUST Grant (\$53,752).
11. Includes transfer to Noncommercial Fund of \$1,004,895, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000).
12. Includes disbursement to Department of Agriculture and Consumer Services of \$90,000.
13. Includes disbursements to Department of Agriculture and Consumer Services (\$90,000) and legislatively mandated transfer of interest (\$614,239.29).

Claims Against the Commercial Cleanup Fund

Claims against the Commercial Cleanup Fund for directed activities are reviewed and audited on a “first come, first serve” basis. The status of all claims requesting reimbursement from the Commercial Fund that were received as of June 30, 2011 is presented in Table 9. These claims only include costs claimed to date, and do not represent the total costs for cleanups.

In addition to assessments and cleanups conducted by UST owners and operators (responsible parties), UST Section staff used state-contracted environmental service providers to direct cleanups at 944 commercial UST releases where no viable responsible parties existed. The current three-year contract covers the period from FY 2009 to FY 2012. A total of nine contracts were awarded state-wide, three in the coastal region, three in the piedmont region and three in the mountain region. Five environmental service providers won those nine contracts to provide assessment and remediation of releases with no viable responsible parties. Although the contract process began in calendar year 2009, actual work was not begun until the beginning of calendar year 2010 due to a delay in completing contractor selection.

**Table 9 – Claims Against the Commercial Cleanup Fund
July 1, 1988 – June 30, 2011**

	Number	Cost
Claims Paid	31,249	\$ 457,854,366
Incidents Denied Totally ¹	33	\$ 4,573,040
Claims Denied Partially ²	16,016	\$ 89,929,595
Total Deductibles Paid	-----	\$ 82,574,343
Claims Pending	210	\$ 3,737,946
Contracted Cleanups ³	1538	\$ 22,213,936

¹ Ineligible (operating fees not paid, release discovery pre-dates program)

² Excessive or undocumented costs

³ State Lead actions undertaken or completed

Commercial Fund Balance and Projected Needs

On June 30, 2011, the Commercial Fund balance was \$54,840,574 with pending estimated obligations of \$43,926,271 (see Figure 3). Therefore, the estimated Commercial Fund balance at the end of FY 2011 is \$10,914,303 (See Figure 4).

Maintaining a positive cash balance represents a significant change in the Commercial Fund over previous years. The UST Section now directs most of the work that is done, and only the owners of those commercial incidents with risk levels above the risk threshold are directed to continue with assessments and remediation. This results in greater fiscal control over the fund and focuses resources on those incidents exhibiting the greatest risks to human health and the environment. The fund balance has remained greater than disbursements, claims pending, and other obligations since 2006 and DENR has been able to periodically direct cleanups of more and more incidents of higher risk. The fund balance is not sufficient, however, to address the costs of cleaning up all petroleum releases eligible for reimbursement from the Commercial Cleanup Fund. The gap between fund resources and total demand for cleanup has left owners of all low and many intermediate risk releases without meaningful access to reimbursements from the Commercial Cleanup Fund. Those owners can proceed with cleanups using personal financial resources, but are not assured reimbursement from the Commercial Cleanup Fund until after reimbursement of the costs of all cleanup work that has been actually ordered by DENR – limited now to cleanups of all high risk releases and some intermediate risk releases. At the end of FY 2011, there were claims against the Commercial Fund for about \$5.6 million for costs of assessment and cleanup work done by parties responsible for lower risk releases that could not be directed by the department.

Although legislation has enabled the department to maintain a positive cash balance in the Commercial Cleanup Fund during the past five years, the long-term fiscal condition of the Fund remains uncertain because of the backlog of known releases waiting to be cleaned up and the continuing influx of new releases that will need cleanup. The department can estimate the costs of cleaning up all known commercial UST releases by multiplying the average cost to the Fund per release (\$82,000) by the number of known commercial releases needing cleanup (6,257) for a total future obligation of about \$513 million, an amount that includes about \$44 million obligated for cleanups already underway. With a present balance of about \$55 million, the Fund will need an additional \$458 million to clean up all presently known commercial UST releases. At the present rate revenue comes into the Fund (\$28 million per year on average), about 17 years will be necessary to generate the cash to pay for those obligation. This estimate does not account for the costs of cleaning up releases not yet reported (future releases). Since approximately 300 new commercial UST releases are discovered reported each year, an additional \$25 million per year can be added to the total obligation.

Figure 3
Commercial Fund Balance and
Disbursement and Claims Pending

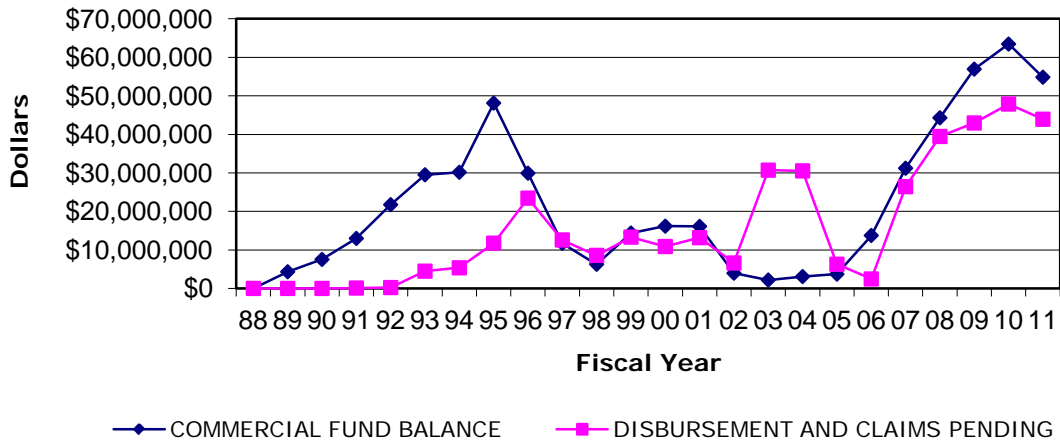


Figure 4
Commercial Fund Balance Minus
Disbursement and Claims Pending

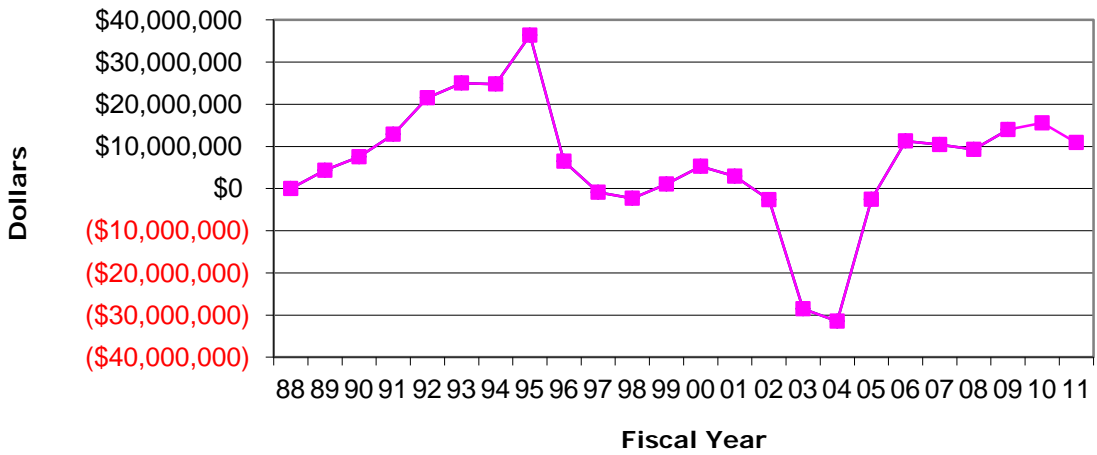


Table 10 – Total Commercial Fund Revenues and Expenditures 7/1/10 – 6/30/11	
Commercial Fund Balance as of 7/1/10	\$ 63,445,967
Total Commercial Revenues (see Table 7)	\$ 26,951,504
Total Commercial Expenditures	(\$ 35,556,897)
Total Claims and Contracted Cleanups - \$30,993,497	
Transfers ¹ - \$ 90,000	
Program Expenses - \$ 3,859,161	
Legislative Mandated Interest Transfer- \$ 614,239	
Commercial Fund Balance as of 6/30/11	\$ 54,840,574
Total Projected Estimated Obligations²	(\$ 43,926,271)
Estimated Commercial Fund Balance as of 6/30/11	\$ 10,914,303

1. From Table 8, footnote 12, transfer to the Noncommercial Fund for State Lead expenses.
2. Estimated obligations include estimates of un-reimbursed costs for tasks not requiring pre-approval that were incurred prior to implementation of Session Law 2004-124; outstanding un-reimbursed costs for pre-approved directed tasks; requested reimbursement costs for claims under review; approved costs for claims awaiting reimbursement; unreimbursed costs for approved non-directed tasks; and remaining program expenses.

One initiative that may affect future demand on the Commercial Fund is pay-for-performance (PFP) cleanups. On October 1, 2001, the General Assembly ratified House Bill 1063, (Session Law 2001-442) which allows responsible parties to participate in the pay-for-performance program on a voluntary basis. PFP requires cleanup goals to be met before payments can be made to environmental consultants. This reimbursement method requires the Commercial Fund to obligate the contracted cleanup costs. PFP obligations may initially place a higher demand on the Commercial Fund, but should decrease the costs of cleanups. PFP was re-authorized by Session Law 2008-195.

Another factor that may increase future demands on the Commercial Fund is the increase in claims for bodily injuries and property damages brought by third parties. In FY 2011, there were six on-going and/or new third-party claim actions. The financial impact of third-party claims cannot be estimated with certainty because the Commercial Fund does not directly control award amounts resulting from legal actions due to third-party claims.

After UST operating fees were increased on January 1, 1997, revenue from this funding source declined through the end of FY 1999 (Table 11). This decline was likely due to a reduction in the number of registered USTs which occurred after implementation of the 1998 federal upgrade requirements for USTs. Many tank owners chose to close their USTs rather than bring them into compliance with the new standards. Since January 1, 1997, annual operating fees remained unchanged, at \$200 to \$300 per tank, until January 1, 2009, when Session Law 2008-195 increased the annual operating fee to \$420 per tank, regardless of tank capacity. This legislation was enacted to bring sufficient additional revenue into the Commercial Fund to help the state meet two requirements of the federal Energy Policy Act of 2005 – removing free product petroleum at all releases and conducting compliance inspections at every UST facility at least once every three years.

Table 11 – Commercial UST Population and Operating Fee Revenue		
Fiscal Year	No. of Commercial USTs Billed	Operating Fee Revenue
FY 1989	-	\$ 4,322,917
FY 1990	-	\$ 8,086,895
FY 1991	57,385	\$ 6,889,969
FY 1992	52,529	\$ 9,910,737
FY 1993	48,812	\$18,032,784
FY 1994	43,314	\$23,661,875
FY 1995	39,289	\$ 8,500,000
FY 1996	37,529	\$11,050,000
FY 1997	37,776	\$10,839,975
FY 1998	36,563	\$10,008,917
FY 1999	34,428	\$ 8,697,468
FY 2000	33,558	\$ 8,844,093
FY 2001	33,776	\$ 8,464,019
FY 2002	32,839	\$ 8,553,715
FY 2003	31,155	\$ 8,087,033
FY 2004	32,005	\$ 8,309,807
FY 2005	31,518	\$ 7,987,101
FY 2006	30,638	\$ 7,951,508
FY 2007	30,145	\$ 7,937,236
FY 2008	28,477	\$ 7,686,324
FY 2009	29,156	\$ 10,686,223
FY 2010	28,667	\$ 11,505,666
FY 2011	28,249	\$ 10,680,351

Note: The numbers in the middle column of Table 11 above include billable regulated USTs and billable unregulated commercial USTs, but do not include non-billable federal regulated and commercial USTs, nor non-billable regulated USTs taken out of use prior to December 22, 1988 but not permanently closed.

Noncommercial Fund Receipts and Disbursements

Revenue into the Noncommercial Cleanup Fund

The sources of funding for the Noncommercial Fund include:

- one-half of approximately 30 percent of the motor fuel and kerosene inspection tax of 1/4 of one cent per gallon (See Note 1 below);
- 3/32 of the excise tax of 1/2 cent per gallon on motor fuel and kerosene; and
- interest earned on the account.

Note 1: After using a portion (about 70 percent) of the revenue to enable the departments of Revenue and Agriculture and Consumer Services to collect the inspection tax, one-half of the remaining revenue goes into the Commercial Cleanup Fund and one-half goes into the Noncommercial Cleanup Fund. However, if the balance of the Noncommercial Cleanup Fund is below \$5 million, all of the remaining revenue goes into the Noncommercial Fund. Since the Noncommercial Fund balance has remained below \$5 million for fiscal year; all of the remaining revenue has gone into the Noncommercial Fund.

Owners and operators of noncommercial USTs are not required to pay annual operating fees. Revenues received for the Noncommercial Fund for the 12-month period from July 1, 2010 to June 30, 2011 were slightly greater than \$6 million (Table 12).

Motor Fuel & Kerosene Inspection Tax	\$ 3,946,303
Motor Fuel & Gasoline Excise Tax	\$ 2,436,811
Interest	\$ 5,521
Cost Recovery	\$ 0
Total Noncommercial Revenues	\$ 6,388,635

N.C. General Statute 119-18(b) states that if the amount of revenue in the Noncommercial Fund at the end of the month is at least \$5 million, one-half of the motor fuel inspection tax must be credited to the Commercial Fund and one-half must be credited to the Noncommercial Fund. If the amount of revenue in the Noncommercial Fund at the end of the month is less than this threshold amount, all of the inspection tax will be credited to the Noncommercial Fund. For FY 2011, all \$4,283,393 of the fund revenues from the inspection tax was transferred into the Noncommercial Fund.

Disbursements from the Noncommercial Cleanup Fund

No deductible or co-pay amounts apply to reimbursements from the Noncommercial Fund. (Note: On July 1, 2010, the statute was amended to eliminate the \$5,000 deductible and 10 percent co-pay for landowners.) Table 13 lists the receipts and disbursements by fiscal year for the period from July 1, 1988 to June 30, 2010.

**Table 13 – Receipts & Disbursements for Noncommercial Cleanups
7/1/88 – 6/30/11**

Fiscal Year	Receipts	Disbursements ¹	Program Expenses
FY 1989	\$ 0	\$ 0	\$ 0
FY 1990	2,905,035	0	201,254
FY 1991	2,934,347	564,206	547,595
FY 1992	3,018,344	2,143,155	517,221
FY 1993	7,693,288	4,069,497	601,686
FY 1994	3,404,086	2,012,312	694,423
FY 1995	5,194,725	2,900,368	666,270
FY 1996	5,215,550	5,029,109	783,684
FY 1997	5,587,781	5,924,799	801,143
FY 1998	5,717,592	3,869,091	667,724
FY 1999	5,945,461	2,776,105	620,574
FY 2000	5,636,563	5,028,505	570,738
FY 2001	5,811,666	7,890,618 ²	733,811
FY 2002	6,620,808 ³	9,182,320	913,755
FY 2003	7,664,329 ⁴	9,898,806	1,166,494
FY 2004	8,060,151	7,756,579	1,244,864
FY 2005	14,885,997 ⁵	11,326,318	1,265,079
FY 2006	7,615,613 ⁶	5,005,578	1,298,441
FY 2007	6,053,993 ⁷	5,099,349	1,349,006
FY 2008	6,030,546 ⁸	6,105,295	1,416,685
FY 2009	6,178,730 ⁹	5,878,808	1,324,956
FY 2010	6,726,977 ¹⁰	4,371,297	1,451,830
FY 2011	6,388,636	5,922,935	1,518,243 ¹¹
TOTAL	\$135,290,218	\$112,765,047	\$ 20,355,476

1. Does not include program expenses.
2. \$2 million was transferred from the Noncommercial Fund to the State's General Fund.
3. Includes transfer of \$784,382 from Circle K Settlement Fund.
4. Includes transfer of \$3,418,990 of motor fuel and kerosene tax from Commercial to Noncommercial trust funds due to balance below \$5 million – GS 119.18(b).
5. Includes additional revenue from the 1-year 1.1 cent per gallon excise tax or \$19 million to the Trust Fund.
6. Includes \$1,922,601 transfer to Noncommercial Fund, \$90,000 transfer to the Department of Agriculture and Consumer Services and \$30,016 transfer to repay Federal Trust Fund for State Lead program expenses.
7. Includes transfer to Noncommercial Fund of \$598,935 and disbursement from Commercial Fund to Department of Agriculture and Consumer Services (\$90,000) and Federal LUST Grant (\$108,904).
8. Includes transfer to Noncommercial Fund of \$1,381,848, and disbursement from the Commercial Fund to the Department of Agriculture and Consumer Services (\$90,000), and Federal LUST Grant (\$53,752).
9. Includes transfer to Noncommercial Fund of \$1,004,895, and disbursement from the Comm. fund to Department of Agriculture and Consumer Services (\$90,000).
10. Includes transfer from NC DOT of \$4,283,393.
11. Includes legislatively mandated transfer of interest from the Fund - \$614,239.29.

Claims Against the Noncommercial Cleanup Fund

Claims against the Noncommercial Fund for directed activities are processed on a “first come, first serve” basis. The status of all claims requesting reimbursement from the fund that were received as of June 30, 2011 is presented in Table 14. These claims only include costs claimed to date, and do not represent the total costs for cleanups.

In addition to assessments and cleanups conducted by UST owners (responsible parties), UST Section staff directed cleanups at 190 noncommercial UST releases where no viable responsible parties existed using state-contracted environmental service providers. The current three-year contract covers the period from FY 2009 to FY 2012. A total of nine contracts were awarded state-wide; three in the coastal region, three in the piedmont region and three in the mountain region. Five environmental service providers won those nine contracts to provide assessment and remediation of releases with no viable responsible parties. Although the contract process began in calendar year 2009, actual work was not begun until the beginning of the calendar year of 2010 due to a delay in completing the selection of the contractors.

**Table 14 – Claims Against the Noncommercial Cleanup Fund
7/1/88 – 6/30/11**

	Number	Cost
Claims Paid	13,249	\$ 107,318,658
Incidents Denied Totally ¹	4	\$ 59,845
Claims Denied Partially ²	5,365	\$ 13,276,127
Total Deductibles Paid	-----	\$ 1,223,700
Claims Pending	76	\$ 1,035,279
Contracted Cleanups ³	236	\$ 2,348,003

¹ Ineligible (tank system less than 10% below ground)

² Excessive or undocumented costs

³ State Lead actions undertaken or completed

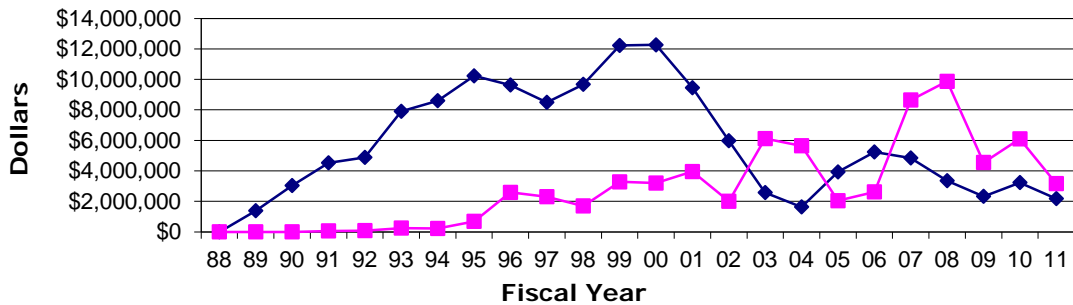
Noncommercial Fund Balance and Projected Needs

As of June 30, 2011, the Noncommercial Fund balance was \$2,180,688 (Table 15). The total for pending claims stood at \$1,035,279 (Table 14). Compared to the previous fiscal year, claims against the Noncommercial Fund and reimbursements from the Noncommercial Fund have increased. This trend is most likely the result of increased environmental awareness on the part of buyers and lenders during sales of residential properties, where most unregulated tanks (heating oil USTs) are located. Many of the releases from unregulated USTs are discovered during property transfers. The department expects this trend will continue for the foreseeable future (see Figures 5 and 6).

Table 15 - Total Noncommercial Fund Revenues, Expenditures and Balance 7/1/10 - 6/30/11	
Noncommercial Fund Balance as of 6/30/10	\$3,233,230
Total Noncommercial Revenues (see Table 12)	\$6,388,635
Total Noncommercial Expenditures	(\$7,441,178)
Total Claims and Contracted Cleanups - \$5,922,935	
Administrative Costs - \$1,518,243	
Noncommercial Fund Balance as of 6/30/11	\$2,180,688
Projected Noncommercial Fund Obligations¹	(\$3,163,402)
Estimated Noncommercial Fund Balance as of 6/30/11	(\$982,714)

1. Estimated obligations include estimates of un-reimbursed costs for tasks not requiring pre-approval that were incurred prior to implementation of Session Law 2004-124, outstanding un-reimbursed costs for pre-approved directed tasks, requested reimbursement costs for claims under review, approved costs for claims awaiting reimbursement, unreimbursed costs for approved non-directed tasks, and remaining program administration costs.

Figure 5 - Noncommercial Fund Balance and Disbursement and Claims Pending



◆ NONCOMMERCIAL FUND BALANCE ■ NONCOMMERCIAL CLAIMS PENDING & OBLIGATIONS

Figure 6 - Noncommercial Fund Balance Minus Disbursement and Claims Pending

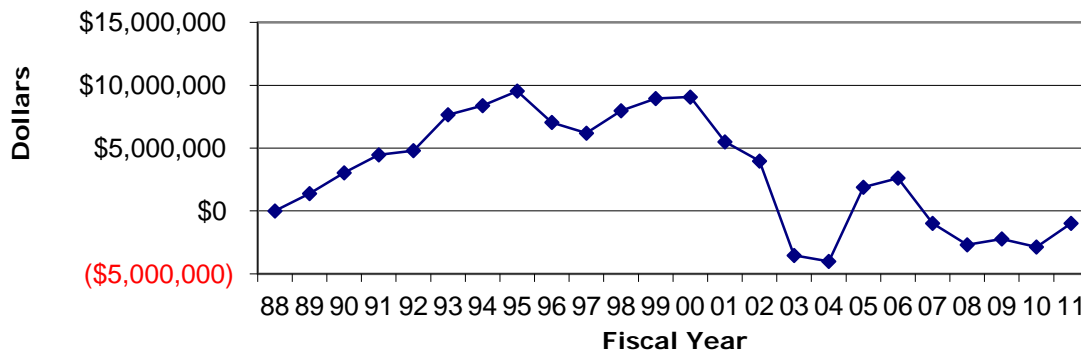


Table 16 shows the estimated cost to complete cleanups for noncommercial incidents reported from July 1, 2010 to June 30, 2011. It should be noted, however, that cleanups can easily extend over several years and costs may vary greatly. In addition, these figures do not include remedial costs for reported releases from past fiscal years.

Table 16 – Estimate of Cleanup Costs for Noncommercial Incidents Reported July 1, 2010 – June 30, 2011		
Region	Incidents*	Total Estimated Cleanup Cost**
Asheville	38	\$ 437,932
Fayetteville	12	\$ 106,524
Mooreville	64	\$ 698,324
Raleigh	121	\$ 1,432,156
Washington	73	\$ 710,160
Wilmington	33	\$ 556,292
Winston-Salem	87	\$ 1,538,680
Total	428	\$5,480,068
*During FY 2011, approximately 37 percent of reported new releases were from noncommercial USTs.		
**The estimated average cost to cleanup a release from a noncommercial UST is \$11,836.		

Federal LUST Prevention Grant

The UST Section receives grant money from the federal LUST Trust Fund to promote compliance with federal and state UST regulations. As of June 30, 2011, the UST Section had not received its grant from the US EPA for FY 2011. However, the UST Section continues to use the balance of the \$1,998,608 is received during prior US EPA grants cycles. The provisions of the Energy Policy Act include inspecting UST facilities at least every three years, implementing secondary containment requirements for all new and replacement UST systems, prohibiting delivery of fuel to non-compliant UST systems, training UST operators and maintaining and publishing information about sources and causes of releases from UST systems. The grant funds two permanent technical positions, and includes funds to upgrade the existing permitting and inspection databases.

Federal LUST Cleanup Grant

The Federal LUST Cleanup Grant, also from the federal LUST Trust Fund, is used to clean up petroleum releases from USTs that have no viable responsible parties, to provide alternative water supplies to affected third-parties, to perform emergency activities, to temporarily relocate residents affected by leaking USTs and to conduct enforcement activities. The use of this grant is limited to regulated USTs -- primarily commercial tanks used for storing motor fuels. Releases from USTs used for heating oil and those used for farm or residential uses (1,100 gallons capacity or less) are not eligible for resources from this grant.

Individuals (i.e., owners/operators) do not have access to the federal LUST Trust Fund. Only the federal government and states with cooperative agreements with the EPA can draw on the Trust Fund. It may be used in situations where: (1) the responsible party cannot be identified; (2) the responsible party is financially unable to pay for the cleanup; or (3) the responsible party is unwilling and refuses to undertake assessment and/or cleanup actions.

As stated above, one of the uses of the Federal LUST Cleanup Grants is to provide alternative water to households in which the owner's well becomes contaminated by a UST release. The following table shows the number of households affected in which alternate water, either bottled and/or a well treatment system, was provided since FY 1988 through FY 2011.

TABLE 17 – SUMMARY OF ALTERNATE WATER FY 1988 THROUGH FY 2011			
1988 - 2008	2009	2010	2011
142	127	119	126

Since the state's UST program began in 1988, the federal Leaking UST Trust Fund Program Cooperative Agreement has received awards in excess of \$57 million. Approximately 45 percent of expenditures to date have been spent on clean-up activities, 20 percent on enforcement, and 35 percent on administrative costs. Administrative costs include personnel (salaries and fringes) and operating (travel, equipment, and supplies). The remaining balance available as of June 30, 2011 is \$2,737,074. The current grant award is \$2,134,000.

The program is obligated to seek recovery of all costs incurred during federally-funded state lead cleanups. Since the beginning of the program, a total of \$1,878,468 has been recovered in federal cleanup money and, of that amount, \$1,075,067 was recovered from the North Carolina Commercial Fund. Those costs were recovered because some releases, initially cleaned up with federal money, were later determined to be eligible for reimbursement from the Commercial Fund. In FY 2011, the department recovered \$10,300 in federal money, none of which were recovered from the Commercial Fund. Historically, the program recovers approximately 3 percent of funds spent during state lead cleanups.

Groundwater Protection Loan Fund

The Groundwater Protection Loan Fund Program was created in 1991 and codified in NC General Statute 143-215.94P. It provided financial assistance to owners of commercial USTs who replaced or upgraded their tanks to meet the performance standards required for all USTs by December 22, 1998. Administrative rules implementing the program were adopted by DENR and became effective December 1, 1992. Revenues for the fund were generated through a 0.0025 cent (one quarter of one cent) per gallon motor fuel excise tax received from January 1, 1992 through December 31, 1994.

Once the Groundwater Protection Loan Fund had served its purpose, the balance of the fund (\$31,288,899) was transferred into the Commercial Cleanup Fund.

American Recovery and Reinvestment Act of 2009

The UST program received a grant from the US EPA on July 17, 2009 for a portion of the \$200 million allocated by the American Recovery and Reinvestment Act of 2009 (ARRA) for cleanups of leaking underground storage tanks (LUST cleanups) nationwide. The section's grant award of \$7,554,000 is being used to conduct assessment and cleanup activities at approximately 172 UST releases located

throughout the state. Rules and guidelines governing the use of federal LUST funds also apply to ARRA funds. Therefore, all 172 releases chosen are those for which parties responsible for the releases are unable or unwilling to conduct cleanups. The funds have allowed NC DENR to carry out the cleanup processes at the UST releases that pose a risk to public health and the environment and to later seek recovery of cleanup expenditures from the parties responsible for releases, whenever required and appropriate.

The US EPA grant covers a period of 30 months, beginning on May 15, 2009 and ending on September 30, 2011. However, eligible assessment and cleanup activities may continue past the two-year mark if funds remain available. The UST Section has awarded contracts worth \$6,763,343 to five environmental cleanup companies and contracts worth \$594,265 to two laboratory service providers. The UST Section hired two hydrogeologists for the grant period to oversee the assessment and cleanup activities of the cleanup companies, to assist in managing the contracts, to assist in reporting accomplishments, and to monitor the contracted cleanup companies and laboratories for compliance with all ARRA rules and guidelines. As of June 30, 2011, the UST program had obligated a little over 97 percent of the grant and had spent about 61 percent. Cleanup work has been conducted at 154 of the 172 incidents. For FY 2011, 14 more sites have been closed, for a total of 27 since the program was initiated.

Pay for Performance

On October 15, 2001, Session Law 2001-442 (H 1063) created a pilot program giving the department the authority to allow voluntary performance-based cleanups of discharges or releases of petroleum from underground storage tanks. Two petroleum release incidents were selected for the initial pilot program. Performance-based contracts were awarded to two qualified environmental service providers.

Session Law 2008-195 (H 2498) extended the voluntary pilot program retroactively back to October 1, 2001 with a new expiration date of October 1, 2011. For FY 2011, no applicants requested a voluntary cleanup for their site property. The UST Section will continue to notify applicants to the UST Program of the availability of pay-for-performance and encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents.

Site Specific Risk-Based Cleanups

In 2008, the General Assembly passed Session Law 2008-195 which directed NCDENR to establish a pilot program to evaluate the cleanup safety and cost-effectiveness of using of site-specific risk-based cleanup standards for certain Intermediate Risk petroleum UST incidents. This voluntary pilot program would allow responsible parties to determine cleanup levels using the Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites adopted by the American Society for Testing and Materials (ASTM) as E1739-95(2002) for Intermediate Risk incidents where contamination had not and would not move past the property boundaries of the site. To date no responsible party has elected to participate, and the UST program has been unable to compare benefits and drawbacks of site-specific cleanups with benefits and drawbacks of presently allowable risk-based cleanups.

Recommendations

The Division of Waste Management makes the following recommendations for the Commercial and Noncommercial Cleanup Funds and the UST program:

- Transition from (and ultimately terminate) the Commercial Cleanup Fund. In place of a state-subsidized fund, owners and operators of regulated, commercial USTs should use other financial responsibility mechanisms, such as private insurance, bonding, letters of credit, self-insurance, and others. This action will initially reduce and ultimately end the use of public funds to clean up new releases from UST systems that have responsible owners and operators. A state fund will continue to be needed to clean up the legacy of existing petroleum releases; to clean up new releases from UST systems owned or operated by parties that lack financial resources; and to cleanup sites where a responsible party cannot be identified. Transitioning to other approved financial responsibility mechanisms will also help to reduce the number and severity of releases by giving tank owners and operators additional economic incentives to prevent releases and clean up releases before contamination reaches the state's soil and groundwater.
- Prevent releases by maintaining a compliance inspection frequency of three years for USTs in North Carolina. Triennial inspections will help ensure UST systems are in compliance with all release prevention and detection requirements, help train UST operators detect and correct more out-of-compliance equipment and operating procedures that could allow a release, and detect some undiscovered releases before contamination of the soil and groundwater occurs. Triennial inspections are required by the federal Energy Policy Act of 2005.
- Prevent releases by continuing to provide release prevention and detection training to UST owners and operators. Owner/operator training is required by the federal Energy Policy Act of 2005, and it is particularly important due to the large number of UST facilities in North Carolina being bought and operated by new and inexperienced owner/operators each year. Operator training is required by the federal Energy Policy Act of 2005.
- Continue to find and implement better and more cost-effective methods for assessing and cleaning up petroleum releases, including reviewing existing rules and regulations and reducing or eliminating requirements whenever practical while maintaining a sufficient level of protection for public health and the environment.
- Continue to encourage responsible parties of UST releases to consider pay-for-performance cleanups of their incidents. Pay-for-performance (PFP) is a reimbursement method that requires cleanup goals to be met before payments can be made to environmental consultants. The PFP pilot program indicates that cost savings are realized in cleaning up the pilot program sites selected.